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21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**
23 **OAKLAND DIVISION**

24 ONE FAIR WAGE, INC.,

25 Plaintiff,

26 vs.

27 DARDEN RESTAURANTS, INC.,

28 Defendant.

Case No. 3:21-cv-2695
The Hon. Edward M. Chen

**PLAINTIFF'S APPLICATION FOR
LEAVE TO FILE A SURREPLY
BRIEF AND OBJECTION TO
REPLY EVIDENCE**

*[Filed concurrently with Plaintiff's
Proposed Surreply Brief and Proposed
Order]*

Hearing Date: August 26, 2021

Time: 1:30 p.m.

Ctrm.: G – 15th Floor

Complaint Filed: April 15, 2021

1 **APPLICATION FOR LEAVE TO FILE SURREPLY AND OBJECTION TO**
2 **REPLY EVIDENCE**

3 Defendant Darden Restaurants, Inc., raises two new arguments in its
4 Consolidated Reply Brief in Support of its Motions to Dismiss. (ECF No. 22 at 8–9.)
5 Plaintiff One Fair Wage, Inc. (“OFW”) thus requests leave, pursuant to Civil Local
6 Rule 7–3, to file the attached short proposed Surreply Brief, solely for the purpose
7 of explaining why Darden has waived these two arguments and why the arguments
8 are nonetheless without merit. *See, e.g., Banks v. Cty. of San Mateo*, No. 16-cv-4455,
9 2017 WL 3434113, at *1 n.3 (N.D. Cal. Aug. 10, 2017) (granting leave to file surreply
10 to address new arguments on reply); *GT Nexus, Inc. v. Intrtra, Inc.*, No. 11-cv-2145,
11 2014 WL 3373088, at *1 (N.D. Cal. July 9, 2014) (same).

12 Darden also introduces new evidence in its Reply Brief that it did not
13 introduce in any of its initial motions to dismiss. (ECF No. 23 at Ex. A, B.) Pursuant
14 to Civil Local Rule 7–3(d)(1), OFW hereby objects to, and moves to strike, this reply
15 evidence because it constitutes improper “new evidence” that should not have been
16 introduced for the first time in the Reply Brief. *See Willner v. Manpower Inc.*, No.
17 11-cv-2846, 2013 WL 3339443, at *3 (N.D. Cal. July 1, 2013) (disregarding evidence
18 first introduced in a reply). In the alternative, if this Court concludes that Darden’s
19 arguments are not waived and that this evidence was properly introduced in the
20 Reply Brief, OFW requests that this Court at very least delay resolution of the
21 matter to permit OFW to introduce its own rebuttal evidence and file a more
22 detailed surreply brief.

23 **Defendant’s position.** On August 11, 2021, Plaintiff’s counsel contacted
24 Defendant’s counsel to notify them of this application and inquire whether
25 Defendant would oppose the request to file a surreply brief. Defendant responded
26 on August 12 that it opposes Plaintiff’s request. To aid in the Court’s consideration
27
28

1 of this request, the full email exchange of August 11–12 is included as an
2 attachment to this Application.

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4 Respectfully submitted,

5 /s/ Jason Harrow

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